

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B2

PLR-119979-14

Date:

October 10, 2014

### Legend

Date 8 =

Date 9 =

Date 10 =

m =

n =

o =

Agreement X =

Dear :

This letter responds to your representative's May 12, 2014 letter requesting that we supplement a private letter ruling dated March 10, 2014 (PLR-137279-13) (the "Original Ruling"). The information submitted for the Original Ruling and this supplemental request is summarized below. Capitalized or underlined terms not defined in this letter have the meanings assigned to them in the Original Ruling.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support

of the request for ruling. Verification of the information, representations, and other data may be required as part of the audit process.

### SUPPLEMENTAL FACTS

Due to certain developments, Distributing plans to make the Distribution on a later date within the planned time frame. On Date 8 and Date 9, Distributing acquired \$m worth of Controlled stock on the open market (the "Purchased Shares"). As a result, and taking into account subsequent exercises of Controlled Stock Options, Distributing currently owns approximately n percent of Controlled. Distributing was in control of Controlled at the time of the acquisition.

Distributing may also delay the Distribution beyond the original planned time frame. If the Distribution is delayed until after Date 10, in order for Distributing to maintain control over Controlled prior to the Distribution, Distributing and Controlled are contemplating entering into certain arrangements to supplement the Separation Agreement.

Additional financial information has been submitted indicating that Segment 1 has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years. Distributing is also considering additional restructuring transactions, including, without limitation, the separation of Segment 2 of Business A (which has recently been renamed) from Segment 1 of Business A after the Distribution.

### PROPOSED TRANSACTION

For what are represented as valid business reasons, Distributing proposed the following transaction (the "Proposed Transaction"):

- (S1) For purposes of the Distribution, the Distributing RSU holders will be treated by Distributing as Distributing shareholders and will receive Controlled stock in the transaction. Nevertheless, Distributing will take actions as necessary and permitted to ensure it distributes control of Controlled to actual Distributing shareholders in the Distribution.
- (S2) If the Distribution is postponed until after Date 10, or in connection with the occurrence of certain exigent circumstances, Controlled may issue tandem stock appreciation rights (the "Tandem SARs") to certain Controlled option holders. The Tandem SARs will grant the option holders the right to a cash settlement of the related option.
- (S3) In connection with the issuance of the Tandem SARs, Distributing and Controlled may enter into a purchase agreement (the "Purchase Agreement"). Under the

Purchase Agreement, Distributing will purchase from Controlled a specified amount of Controlled stock for cash. Shares so purchased would be subject to the transfer restrictions of SEC Rule 144. Distributing's cash purchase would be intended to fund Controlled's cash settlement of the Tandem SARs (the cash purchases under the Purchase Agreement and the Separation Agreement are collectively referred to as the "Cash Contribution").

Following the Distribution, Distributing may retain certain shares in Controlled. Distributing will retain Controlled stock subject to SEC Rule 144 transfer restrictions, if any, and will distribute such shares to Distributing shareholders at a later date to the extent necessary for Distributing to distribute control in Controlled to Distributing's shareholders (the "Retained Shares"). The Retained Shares will have been acquired by Distributing pursuant to the Separation Agreement and/or the Purchase Agreement. Immediately upon expiration of the SEC Rule 144 transfer restrictions, Distributing will distribute the Retained Shares to Distributing's shareholders and RSU holders of record as of the Distribution date as described above. Distributing may also retain shares of Controlled stock for future sale in the open market or in other taxable transactions (the "Retained Sale Shares"). The Retained Sale Shares may have been acquired as Purchased Shares, or pursuant to the Purchase Agreement or the Separation Agreement. The Retained Sale Shares will constitute the percentage of Controlled stock owned by Distributing, prior to the Distribution, in excess of 0 percent; provided that, in all events, Distributing shall distribute an amount of Controlled stock to its shareholders (and not taking into account any Controlled shares distributed to Distributing's RSU holders in the Distribution) constituting control. The Retained Sale Shares are retained for sale to help raise cash for Distributing's business operations.

### SUPPLEMENTAL REPRESENTATIONS

The taxpayer makes the following representations for the Proposed Transaction:

- (a) The taxpayer reaffirms all of the facts, representations, and statements contained in the Original Ruling, as modified herein and as modified by the supplemental submissions.
- (b) No part of the consideration to be distributed by Distributing in the Distribution will be received by a shareholder of Distributing as a creditor or an employee or in any capacity other than that of a shareholder of Distributing, except in the case of a Distributing shareholder that also holds Distributing RSUs and to the extent such holder receives a distribution of Controlled stock with respect to its RSUs in the Distribution. In addition, the distribution of Controlled stock to Distributing's shareholders in the Distribution is with respect to their ownership of Distributing stock.

- (c) Distributing will distribute to its shareholders an amount of stock in Controlled constituting control (within the meaning of § 368(c)).
- (d) Distributing will hold the Retained Sale Shares, if any, following the Distribution to provide flexibility in obtaining working capital to and reducing the indebtedness, if any, of Distributing.
- (e) Any Retained Sale Shares will be sold as soon as commercially practicable, but in no event later than five years after the Distribution.
- (f) After the Distribution, Distributing will vote the Retained Sale Shares, if any, in proportion to votes cast by the other Controlled shareholders and will grant to Controlled a proxy for the Retained Sale Shares requiring this manner of voting.
- (g) From the date of the Distribution until the date Distributing has disposed of all Retained Sale Shares, no director or officer of Distributing or any of its subsidiaries will be a director or officer of Controlled or any of its subsidiaries, except for a Distributing officer/board member and a Distributing board member who will each serve on Controlled's board after the Distribution solely to accommodate Controlled's business needs.
- (h) The total adjusted basis of the assets transferred to Controlled in the Cash Contribution will exceed the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled, if any, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to Distributing's creditors in connection with the reorganization.
- (i) The total fair market value of the assets transferred to Controlled in the Cash Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled in connection with the Cash Contribution, if any, (ii) the amount of any liabilities owed to Controlled by Distributing that will be discharged or extinguished in connection with the Cash Contribution, if any, and (iii) the amount of any cash and fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the Cash Contribution, if any.
- (j) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Cash Contribution.
- (k) The aggregate fair market value of the assets Distributing transfers to Controlled in the Cash Contribution will equal or exceed the aggregate adjusted basis of those assets.

- (l) No two parties to the Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (m) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Distribution.
- (n) Each reference to “Business A” in the representations set forth in the Original Ruling shall refer to Segment 1 of Business A.
- (o) The Distribution (without regard to any transaction contemplated under Agreement X) is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of either corporation).

#### SUPPLEMENTAL RULINGS

Based solely on the information submitted and the representations set forth above, and provided that (i) the distribution of Controlled stock to Distributing’s shareholders in the Distribution is with respect to their ownership of Distributing stock, (ii) any money, property, or stock contributed by Distributing to Controlled in the Cash Contribution is exchanged (or deemed exchanged) solely for stock or securities of Controlled, and (iii) any other transfer of stock, money, or property between Distributing, Controlled, or any distributing shareholder is respected as a separate transaction, we rule as follows:

1. The Proposed Transaction will not adversely affect the Original Ruling, which will remain in full force and effect except as modified herein.
2. The Cash Contribution, if any, together with the Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” within the meaning of § 368(b).
3. Distributing will recognize no gain or loss on the Cash Contribution. Sections 357(a) and 361(a).
4. Controlled will recognize no gain or loss on the Cash Contribution. Section 1032(a).
5. Provided that Controlled is a member of the Distributing SAG within the meaning of § 1.355-2(g)(3) after the acquisition of the Purchased Shares, § 355(a)(3)(B) will not treat as “other property” any part of the Purchased Shares.

6. If the Cash Contribution occurs, earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).
7. The retention of the Retained Sale Shares, if any, by Distributing following the Distribution will not be pursuant to a plan having as one of its principal purposes the avoidance of federal income tax within the meaning of § 355(a)(1)(D)(ii).

### CAVEATS

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 50. However, when the criteria in section 11.06 of Rev. Proc. 2014-1, 2014-1 I.R.B. 1, 51 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Additionally, except as specifically provided herein, we express no opinion concerning the tax consequences of any aspect of any matter or item discussed or referenced in this letter. Moreover, no opinion is expressed about the tax treatment of the transaction or of any other matter under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));
- (iii) Whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7); or
- (iv) The tax consequences to Distributing and Distributing's RSU holders upon the distribution of Controlled stock to Distributing's RSU holders.

## PROCEDURAL STATEMENTS

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel (Corporate)